



*IFK*

PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

March 20, 2008

Applicant: Satoshi FURUTA

For: METHOD FOR MANUFACTURE OF ESTERS BY TRANSESTERIFICATION

Serial No.: 10/558 935                      Group: 1621

Confirmation No.: 6397

Filed: December 1, 2005                      Examiner: Katakam

International Application No.: PCT/JP2004/009250

International Filing Date: June 23, 2004

Atty. Docket No.: 4700.P0320US

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT  
UNDER 37 CFR 1.181**

Sir:

STATEMENT OF FACTS

On December 26, 2007, a Request for Continued Examination transmittal was filed with a two-month extension fee based on the mailing date of July 26, 2007 of the final rejection. On January 22, 2008, an Amendment Before First Office Action complying with the submission requirement under 37 CFR 1.114 was filed with the Patent Office to complete the filing requirements for a Request for Continued Examination. On February 20, 2008, a Notice of Improper Request for Continued Examination was mailed from the Patent Office indicating that the Request for Continued Examination was not accompanied by a submission as required by 37 CFR 1.114. On February 25, 2008, the date our office received the Notice of Improper Request for Continued Examination, a call was placed to the Patent Office to inform the Examiner handling the present application that the submission required under 37 CFR 1.114 was indeed mailed to the Patent Office on January 24, 2008. The Examiner agreed that everything appeared to be in order and that he

would contact Applicant's representative if there were any problems. On March 17, 2008, Applicant's representative received a Notice of Abandonment dated March 14, 2008, based on Applicant's failure to timely file a proper reply under 37 CFR 1.113(a) to the final rejection.

MPEP § 706.07(h)IIIA1 specifically states that, "If prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111." Since the amendment corresponding to the submission requirement under 37 CFR 1.114 was filed on January 24, 2008, before the six month abandonment date, the improper RCE was cured and the case should not have been abandoned. Enclosed herewith for the Petition Examiner's benefit is a copy of the image file wrapper from the U.S. Patent Office website showing the dates of the above-discussed documents.

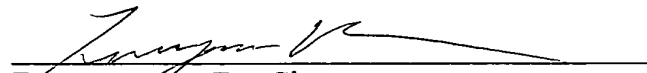
RELIEF REQUESTED

Applicant respectfully requests withdrawal of the abandonment of the present application and the returning of it to the Examiner for further prosecution.

The Commissioner is hereby authorized to charge any additional fee which may be required by this paper, or to credit any overpayment, to Deposit Account No. 06-1382. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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Terryence F. Chapman

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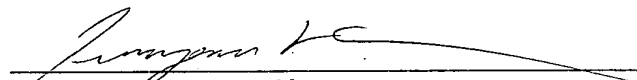
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Phone: (269) 381-1156	John A. Waters	Reg. No. 24 802
Fax: (269) 381-5465	Brian R. Tumm	Reg. No. 36 328
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	Stephen C. Holwerda	Reg. No. 57 391
	Dale H. Thiel	Reg. No. 24 323
	Sidney B. Williams, Jr.	Reg. No. 24 949
	Heon Jekal	Reg. No. L0379*
	*limited recognition number	

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Terryence F. Chapman

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PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

March 20, 2008

Applicant: Satoshi FURUTA

For: METHOD FOR MANUFACTURE OF ESTERS BY TRANSESTERIFICATION

Serial No.: 10/558 935                      Group: 1621

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Filed: December 1, 2005                      Examiner: Katakam

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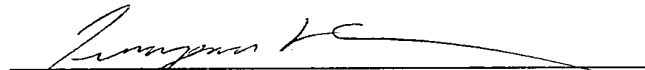
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2026 Rambling Road	Mark L. Maki	Reg. No. 36 589
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December 26, 2007

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Alexandria, VA 22313-1450

**REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL**

Sir:

This is a Request for Continued Examination (RCE) under 37 CFR §1.114 of the below-identified pending utility or plant application:

Serial No.: 10/558 935

Filing Date: December 1, 2005

Confirmation No.: 6397

Title: METHOD FOR MANUFACTURE OF ESTERS BY TRANSESTERIFICATION

Inventor: Satoshi FURUTA

Group: 1621

Examiner: Katakam

Please direct correspondence to the address associated with the following customer number:

**23474**

FLYNN, THIEL, BOUTELL & TANIS, P.C.  
(FIRM)

1. Submission required under 37 CFR §1.114
  - a. ☐ An amendment under 37 CFR §1.116 previously filed on \_\_\_\_\_ was not entered. Please enter before calculating the filing fee.
  - b. ☒ Enclosed is/are:
    - i. ☐ Amendment/Response (please enter before calculating the filing fee)
    - ii. ☐ Affidavit(s)/Declaration(s)
    - iii. ☐ Information Disclosure Statement (IDS)
    - iv. ☒ Acknowledgment Post Card
    - v. ☒ Letter to Patent Office.

2. Miscellaneous

- a. ☐ Small entity status is claimed. See 37 CFR 1.27.  
☐ Statement(s) re small entity is/are enclosed.
- b. ☐ \_\_\_\_\_.

3. Fees (The RCE fee under 37 CFR \$1.17(e) is required by 37 CFR \$1.114 when the RCE is filed).

- a. ☒ The RCE fee and any filing fee for claims are calculated as shown below, after entering any amendments which this transmittal indicates are to be entered prior to such calculation:

For	No. Filed	No. Extra	(X) LG Entity	RATE	( ) SM Entity	Fee
Basic RCE Fee				\$810.00	\$405.00	\$810.00
Total Claims	(9 - 20 = 0)		x \$ 50.00		x \$ 25.00	
Indep. Claims	(1 - 3 = 0)		x 210.00		x \$105.00	
[ ] Multiple Dep. Claim			+ \$370.00		+ \$185.00	
* * * TOTAL FILING FEE * * *						\$ 810.00

- b. ☒ Pursuant to 37 CFR \$1.136(a), please extend the shortened period for response by two months. The extension fee is:  
☒ \$460.00 (37 CFR \$1.17)  
☐ \$ (37 CFR \$1.17; small entity status established by verified statement(s) submitted previously).
- c. ☐ Suspension of action on the above-identified application is requested under 37 CFR \$1.103(c) for a period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months). Suspension of action fee is \$\_\_\_\_\_ (37 CFR \$1.17(i)).
- d. ☒ A check for \$1,270.00 is enclosed to cover fees.
- e. ☐ Please charge my Deposit Account No. 06-1382 in the amount of \$\_\_\_\_\_. A duplicate copy of this transmittal is enclosed.
- f. ☒ The Commissioner is hereby authorized to charge payment of any additional application processing fees under 37 CFR \$1.17 associated with this communication or to credit any overpayment to Deposit Account No. 06-1382. A duplicate copy of this sheet is enclosed.



The undersigned is: ☒ an attorney of record  
☐ acting under 37 CFR §1.34.

Please direct all telephone calls to the undersigned at  
telephone number (269) 381-1156.

Respectfully submitted,

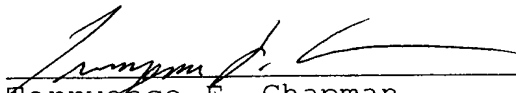
FLYNN, THIEL, BOUTELL & TANIS, P.C.

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Encl: Listed above

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\_\_\_\_\_  
Terryence F. Chapman  
Reg. No. 32 549

PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

January 22, 2008

**COPY**

Applicant: Satoshi FURUTA

For: METHOD FOR MANUFACTURE OF ESTERS BY TRANSESTERIFICATION

Serial No.: 10/558 935 Group: 1621

Confirmation No.: 6397

Filed: December 1, 2005 Examiner: Katakam

International Application No.: PCT/JP2004/009250

International Filing Date: June 23, 2004

Atty. Docket No.: 4700.P0320US

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**AMENDMENT BEFORE FIRST OFFICE ACTION**

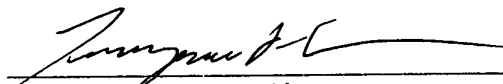
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*Claims  
3/12*

  
Terryence F. Chapman

**Amendments to the Claims**

This listing of claims will replace all prior listings of claims in the application.

**Listing of Claims**

1. (Currently Amended) A method for the manufacture of an ester by transesterification comprising the step of bringing a starting material ester and an alcohol into contact with ~~aan amorphous~~ catalyst comprising (A) an amorphous zirconium oxide ~~having a crystallization temperature of at least 450°C and (B) at least one oxide selected from the group consisting of aluminum oxide, phosphorus oxide and titanium oxide~~ wherein the content of the aluminum oxide is, calculated as the element, 25 to 1 wt.% based on the zirconium element weight.

2. (Previously Presented) The method according to claim 1, wherein the starting material ester in a liquid-phase state and an alcohol in a vapor-phase state are brought into contact with a solid acid catalyst comprising said components (A) and (B).

3. (Previously Presented) The method according to claim 1, wherein the starting material ester is an oil or fat and the alcohol is methanol or ethanol.

4.-9. (Canceled)

10. (Previously Presented) The method according to Claim 1, wherein the starting material ester is a glyceride ester of a saturated or unsaturated aliphatic carboxylic acid having from 8-24 carbon atoms.

11. (Canceled)

12. (New) A method for the manufacture of an ester by transesterification comprising the step of bringing a starting material ester and an alcohol into contact with an amorphous catalyst comprising (A) an amorphous zirconium oxide and (B) phosphorus oxide, wherein the content of the phosphorus oxide is, calculated as the element, 6 to 1 wt.% based on the zirconium element weight.

13. (New) The method according to Claim 12, wherein the starting material ester in a liquid-phase state and an alcohol in a vapor-phase state are brought into contact with a solid acid catalyst comprising said components (A) and (B).

14. (New) The method according to Claim 12, wherein the starting material ester is an oil or fat, and the alcohol is methanol or ethanol.

15. (New) The method according to Claim 12, wherein the starting material ester is a glyceride ester of a saturated or unsaturated aliphatic carboxylic acid having from 8-24 carbon atoms.

16. (New) A method for the manufacture of an ester by transesterification comprising the step of bringing a starting material ester and an alcohol into contact with an amorphous catalyst comprising (A) an amorphous zirconium oxide and (B) titanium oxide, wherein the content of the amorphous zirconium oxide in the catalyst is 40 to 90 wt.% and the content of the titanium oxide is 60 to 10 wt.% in the catalyst.

17. (New) The method according to Claim 16, wherein the starting material ester in a liquid-phase state and an alcohol in a vapor-phase state are brought into contact with a solid acid catalyst comprising said components (A) and (B).

18. (New) The method according to Claim 16, wherein the starting material ester is an oil or fat, and the alcohol is methanol or ethanol.

19. (New) The method according to Claim 16, wherein the starting material ester is a glyceride ester of a saturated or unsaturated aliphatic carboxylic acid having from 8-24 carbon atoms.

**REMARKS**

In order to further distinguish the presently claimed invention over the prior art cited by the Examiner, Claim 1 has been amended to state that the starting material ester and alcohol are brought into contact with an amorphous catalyst comprising an amorphous zirconium oxide and aluminum oxide and that the content of the aluminum oxide, calculated as the element, is from 25 to 1 wt.% based on the zirconium elemental weight. Bayense et al does not teach that Zr-P and Zr-Ti catalysts show a higher conversion rate than the silicate catalysts disclosed therein. Further, this reference does not teach that when Zr-Al type catalysts are amorphous, especially high conversion rates can be achieved. The Examiner has combined Bayense et al with Ginosar et al. However, this second reference has no disclosure with respect to the claimed types of catalysts or the superiority of the claimed types of catalysts compositions. Therefore, even with the combination made by the Examiner, the claimed invention could not have achieved.

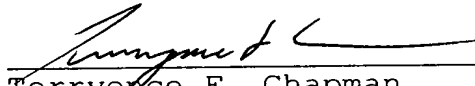
The Zr-Al catalyst specified in Claim 1 shows especially higher conversion rates as compared with the other catalysts as apparent from a comparison of samples 9 to 17 with other samples. Especially, it is noted that sample 11 shows a higher conversion rate of 59% than 56% of sample 23 containing silicon oxide under the same reaction conditions of 200°C and atmospheric pressure (Table 3). Further, the inventors confirmed that sample 23 showed a conversion rate of 69% at a reaction temperature of 250°C and atmospheric pressure, and this is far inferior to sample 12 which shows a very high conversion rate of 80% at the same reaction conditions (Table 3). Although the test results of sample 23 at a reaction temperature of 250°C and atmospheric pressure are not shown in Table 3, applicants will present them if requested by the Examiner.

The Zr-P catalyst defined in Claim 12 also shows a high conversion rate. It is noted that sample 8 shows even a higher conversion rate of 83% as compared with 80% of sample 10 of Claim 1 under the same reaction conditions.

The Zr-Ti catalyst defined in Claim 16 shows a higher conversion rate than the Zr-Ti catalyst containing a crystallized part. The conversion rates of amorphous samples 2 and 19 are higher than those of partially crystallized samples 1, 3-5, 18 and 20-22. The claimed amorphous catalysts having the specified components in the specified compositional range show high conversion rates and enable the production of target esters with good efficiency.

For the reasons advanced above, it is respectfully submitted that the presently claimed invention clearly is patentably distinguishable over the prior art cited by the Examiner. Favorable consideration is respectfully solicited.

Respectfully submitted,

  
Terryence F. Chapman

TFC/smd

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& TANIS, P.C.  
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10/558,935 Process for production of esters through trans-esterification

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01-24-2008	Claims	3	<input type="checkbox"/>
01-24-2008	Applicant Arguments/Remarks Made in an Amendment	2	<input type="checkbox"/>
12-26-2007	Request for Continued Examination (RCE)	3	<input type="checkbox"/>
12-26-2007	Miscellaneous Incoming Letter	2	<input type="checkbox"/>
11-29-2007	Advisory Action (PTOL-303)	3	<input type="checkbox"/>
11-01-2007	Advisory Action (PTOL-303)	3	<input type="checkbox"/>
10-22-2007	Amendment After Final	1	<input type="checkbox"/>
10-22-2007	Claims	2	<input type="checkbox"/>
10-22-2007	Applicant Arguments/Remarks Made in an Amendment	4	<input type="checkbox"/>
10-22-2007	Fee Worksheet (PTO-06)	1	<input type="checkbox"/>
07-26-2007	Final Rejection	7	<input type="checkbox"/>
07-26-2007	List of references cited by examiner	1	<input type="checkbox"/>
07-26-2007	Bibliographic Data Sheet	1	<input type="checkbox"/>
07-26-2007	Index of Claims	1	<input type="checkbox"/>
07-26-2007	Search information including classification, databases and other search related notes	1	<input type="checkbox"/>
07-04-2007	Examiner's search strategy and results	6	<input type="checkbox"/>
04-30-2007	Amendment - After Non-Final Rejection	1	<input type="checkbox"/>
04-30-2007	Specification	1	<input type="checkbox"/>
04-30-2007	Claims	2	<input type="checkbox"/>



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04-30-2007	<u>Specification</u>	13	☐
04-30-2007	<u>Applicant Arguments/Remarks Made in an Amendment</u>	14	☐
04-30-2007	<u>Fee Worksheet (PTO-06)</u>	1	☐
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02-07-2007	<u>NPL Documents</u>	3	☐
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02-01-2007	<u>Notice of Publication</u>	1	☐
01-30-2007	<u>Examiner's search strategy and results</u>	3	☐
01-16-2007	<u>Information Disclosure Statement (IDS) Filed</u>	3	☐
01-16-2007	<u>NPL Documents</u>	3	☐
01-16-2007	<u>Foreign Reference</u>	20	☐
10-25-2006	<u>Notice of DO/EO Acceptance Mailed</u>	2	☐
12-01-2005	<u>Transmittal of New Application</u>	4	☐
12-01-2005	<u>Specification</u>	14	☐
12-01-2005	<u>Claims</u>	2	☐
12-01-2005	<u>Abstract</u>	1	☐
12-01-2005	<u>Oath or Declaration filed</u>	3	☐
12-01-2005	<u>Fee Worksheet (PTO-06)</u>	1	☐
12-01-2005	<u>Information Disclosure Statement (IDS) Filed</u>	2	☐
12-01-2005	<u>Foreign Reference</u>	5	☐
12-01-2005	<u>Foreign Reference</u>	5	☐
12-01-2005	<u>Foreign Reference</u>	8	☐
12-01-2005	<u>Foreign Reference</u>	9	☐
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12-01-2005	<u>Certified Copy of Foreign Priority Application</u>	13	☐
12-01-2005	<u>Certified Copy of Foreign Priority</u>	12	☐

12-01-2005	Application Documents submitted with 371 Applications	15	┐
12-01-2005	Documents submitted with 371 Applications	1	┐
12-01-2005	Documents submitted with 371 Applications	3	┐
12-01-2005	Documents submitted with 371 Applications	1	┐
12-01-2005	Documents submitted with 371 Applications	1	┐
12-01-2005	Miscellaneous Internal Document	1	┐
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FLYNN THIEL BOUTELL & TANIS, P.C.

2026 RAMBLING ROAD

KALAMAZOO, MI 49008-1631

DHT DGB TV  
MLM LLC BRT  
SRT DJV SBW

Paper No.

FEB 25 2008

HJ PMG  
GMS CRA KC  
FILE

Application No.:	10/558,935	Date Mailed:	02/20/2008
First Named Inventor:	Furuta, Satoshi,	Examiner:	KATAKAM, SUDHAKAR
Attorney Docket No.:	4700.P0320US	Art Unit:	1621
Confirmation No.:	6397	Filing Date:	12/01/2005

Please find attached an Office communication concerning this application or proceeding.

Commissioner for Patents

**NOTICE OF IMPROPER REQUEST FOR  
CONTINUED EXAMINATION (RCE)**

Application No.  
10/558,935

Applicant(s)  
FURUTA, SATOSHI

Art Unit  
1600

Date Mailed:

The request for continued examination (RCE) under 37 CFR 1.114 filed on 26 December, 2007 is improper for reason(s) indicated below:

1. ☐ Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
2. ☐ Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
3. ☐ Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
4. ☐ The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
5. ☐ The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
6. ☐ The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
7. ☒ The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this Notice MUST be returned with the reply.***

Direct any questions concerning this notice to

/FLORENCE R. PATTERSON/, Technology Center 1600

Telephone Number: (571)272-0544



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/558,935

12/01/2005

Satoshi Furuta

4700.P0320US

6397

23474 7590 03/14/2008  
FLYNN THIEL BOUTELL & TANIS, P.C.  
2026 RAMBLING ROAD  
KALAMAZOO, MI 49008-1631

DHT \_\_\_\_\_ DGB \_\_\_\_\_ TFC \_\_\_\_\_  
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SRT \_\_\_\_\_ DJV \_\_\_\_\_ SBW \_\_\_\_\_

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HJ \_\_\_\_\_ PMG \_\_\_\_\_  
GMS \_\_\_\_\_ CRA \_\_\_\_\_ KC \_\_\_\_\_  
FILE *Abandoned*

EXAMINER

KATAKAM, SUDHAKAR

ART UNIT PAPER NUMBER

1621

MAIL DATE DELIVERY MODE

03/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/558,935	FURUTA, SATOSHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sudhakar Katakam	1621	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 29 November 2007.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☒ A proposed reply was received on 12/26/07, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
 The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

The request was not accompanied by a submission as required by 37 CFR 1.114. Improper RCE.

/Jafar Parsa/  
Primary Examiner, Art Unit 1621

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**COPY****III. INITIAL PROCESSING**

An RCE will be initially processed by the Technology Center (TC) assigned the application. Technical support personnel in the TC will verify that:

- (A) the RCE was filed on or after May 29, 2000;
- (B) the application was filed on or after June 8, 1995;
- (C) the application is a utility or plant application (e.g., not a design application);
- (D) the application was pending (i.e., not patented or abandoned) when the RCE was filed;
- (E) prosecution in the application is closed (e.g., the last Office action is a final rejection, notice of allowance, or an Office action under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935), or the application is under appeal);
- (F) the RCE was filed before the payment of the issue fee or, if not, a petition under 37 CFR 1.313 to withdraw the application from issue was filed and granted;
- (G) the RCE was accompanied by the proper fee(s) including the RCE fee under 37 CFR 1.17(e); and
- (H) the RCE included a submission as required by 37 CFR 1.114.

**A. Treatment of Improper RCE**

If one or more conditions for filing an RCE have **not** been satisfied, applicant will be so notified. Generally, a "Notice of Improper Request for Continued Examination (RCE)," Form PTO-2051, will be mailed to applicant. An improper RCE will **not** operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application.

If an examiner discovers that an improper RCE has been forwarded to the examiner in error, the application should be immediately returned to a head supervisory legal instruments examiner (HSLIE) within the TC.

**1. Prosecution Is Not Closed**

If prosecution in the application is not closed, applicant will be notified of the improper RCE and any amendment/reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111.

**2. Application Is Under Appeal**

If the application is under appeal and the RCE was not accompanied by the fee set forth in 37 CFR 1.17(e) and/or a submission as required by 37 CFR 1.114, the application will be forwarded to the examiner for appropriate treatment and applicant will be notified of the improper RCE (See subsection X below).

**B. Ambiguous Transmittal Paper**

If an applicant files a transmittal paper that is ambiguous as to whether it is a continued prosecution application (CPA) under 37 CFR 1.53(d) or a request for continued examination (RCE) under 37 CFR 1.114 (e.g., contains references to both an RCE and a CPA), and the application is a plant or utility application filed on or after June 8, 1995, the Office will treat the transmittal paper as an RCE under 37 CFR 1.114 since effective July 14, 2003, CPA practice has been eliminated as to plant and